IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 897 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HAMIDMIYA HUSSAINMIYA BIDIWALA SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR KT DAVE, APP for Respondent No. 1 to 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/04/2000

ORAL JUDGEMENT

#. The petitioner - externee who had been externed from the jurisdiction of Police Commissionerate of Ahmedabad, besides the areas of contiguous districts of Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana, for a period of two years by virtue of order passed on July 30, 1999 by

the Deputy Commissioner of Police, Control Room, Ahmedabad, in exercise of powers under section 56(b) of the Bombay Police Act ("the Act" for short). Prior to passing of the order, a notice dated March 16, 1998 was issued on the proposed externee, indicating allegations against him. The allegations against the proposed externee broadly indicated that he operates in Jamalpur Chakla area of Ahmedabad City and extorts money from the passersby by threatening and intimidating them with the help of knife. That offences are registered against him with Gaekwad Haveli Police Station for some such incidents. Proceedings for externment as contemplated under section 59 were conducted and finally, order came to be passed on July 30, 1999. The said order was carried in appeal as provided under section 60 of the Act and the said appeal also came to be dismissed on September 6, 1999. Aggrieved by the said order of externment and the dismissal of the appeal, the externee has preferred this petition under Article 226 of the Constitution of India.

#. Many contentions are raised in the petition. However, Mr. Tirmizi, learned advocate appearing for the petitioner has pressed into service the only ground of delay in passing the order. He has placed reliance on unreported decision of a Division Bench of this Court in Special Criminal Application No. 1295/94 between Vasantiben Mukeshbhai Randeri v. State of Gujarat & another, decided on January 24, 1995 (Coram: K.J.Vaidhya & S.D.Dave, JJ). He has also pressed into service the unreported decision in Special Criminal Application No. 898/99, between Yohel @ Rocky Anisan Macwan v. State of Gujarat (Coram : A.K. Trivedi, J.), dated March 3, 2000. Mr. Tirmizi placed reliance on a reported decision in the case of Sitaben M. Thakor v. Commissioner of Police, Ahmedabad & others, as reported in 1997 Cr.L.J. 4511. He urged that in the instant case, the order is passed after a lapse of about a year and four months. The delay, even if it is caused at the instance of the externee, would render the order bad because the delay would adversely affect the order considering its object and nature. The causal connection would get snapped and therefore, the satisfaction of the on account of the need for passing the said order would be rendered bad in law. Mr. Tirmizi, therefore, urged that the petition may be allowed and both the orders of the externing authority as well as the appellate authority may be quashed.

#. Mr. K.T. Dave, learned APP has opposed this petition. He submitted that a look at the file of the

department would indicate that it is the petitioner who is responsible for the delay in concluding the externment proceedings and consequently for the delay in passing the order. He therefore, cannot take advantage of his own wrong. Mr. Dave submitted that if the time is not given, it would be argued against the authority that no opportunity is given. If time is given, it is argued that delay is caused and therefore, according to Mr. Dave this is an attempt on the part of the externee to take advantage (or disadvantage) of whatever situation that arises. The Court may not therefore, entertain such petition.

#. Having regard to rival side contentions, before proceeding with the consideration of the exercise of arguments in the facts of the present case, it would be appropriate to consider the proposition of law as laid down by various judgments of this Court. In the case of Sitaben M. Thakor (Supra), it has been held that the inquiry under section 59 of the Act being an urgent need, should he held as expeditiously as possible and only a short notice of three to seven days may be given for submitting the written statement. Thereafter the date should immediately be fixed for examination of the witnesses. Once the examination of witnesses has begun, it should be continued, unless the authorities finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. The Court observed that it is not necessary to record each and everything stated, if in the opinion of the authority, the same is not relevant. No adjournment should be granted on flimsy ground that the externee is busy in the attending the marriage or that the advocate is busy in other Court matters. These are not the grounds for adjournments. The Court observed further, that no definite period of inquiry can be provided as it would depend upon the facts of each case.

#. Division Bench of this Court in the case of Vasantiben Mukeshbhai Randeri (Supra) made the following observations.

"The above said may be a sorry state of affairs. The proposed externee definitely can be said to be guilty of adopting an attitude which has resulted into the procastination of the proceedings. The question which worries us and which has caused anxiety is, as to whether under the provisions contained under section 56 of the Bombay Police Act, 1951 such a long time could

have been made available to the externee. In our opinion on a plain reading of this provisions the answer to the above said questions must be in a clear negative. What all section 56 of the Bombay Police Act, 1951 says is in respect of a notice to be given to the externee, while what all section 59 of the Act of 1951 says is in respect of the hearing to be given to the proposed externee. A conjoint reading of the above said two provisions of the Act of 1951 would make it clear that the removal of a person can be ordered out of a particular area upon certain apprehension. So far as the procedural formalities are concerned the officer is required to inform the person in writing of the general nature of the material allegations against him and to give him a reasonable opportunity of tendering an explanation regarding them. If such a person make an application for the examination of the witnesses to be produced by him, the authority concerned shall grant such application and may examine the witnesses. Any written statement put by such person should be filed with the record of the case and such a person should be filed with the record of the case and such a person shall be entitled to appear before the officer proceeding against him by an advocate or attorney for the purpose of tendering his explanation and examining the witnesses produced by him. Thus even on a casual reading of the provisions contained under section 59 of the Bombay Police Act, 1951, we feel that all what is required to be done is to give the proposed externee a reasonable opportunity of tendering an explanation regarding the general nature of the material allegations against him. The whole idea of the Law Makers, to enact such a procedural aspect embodied in the very powers to extern an individual appears to have been nourished with the prime object of affording a reasonable opportunity which appears in the above said provision cannot be stretched to a position in which the proposed externee or the learned advocate representing his cause, would be able to drag and procastinate the proceedings for an unduly lengthy period. We are justified in our above said conclusion also from the view point of the provisions contained under the Act under which a person can be directed to remove himself out of a particular locality. This all is being done on the basis of a belief that a particular

person acts in a particular fashion in a particular locality and that his acts and deeds within the locality are required to be checked or a close watch on his activities which have grown to a considerable extent in a particular locality. The man is proposed to be externed, so that the net work which he could have established in that particular locality with the assistance of his associates and the underworld elements may be snapped for a considerable long time, so that there could be an immediate end to his activities. The idea behind the concept appears to be a two fold one, firstly, send out a man who is engaged in antisocial activities in a particular area, and secondly, save the area and the people residing therein from a person and his illegal activities. The whole idea is to destroy an established network which an underworld element has been able to create in a particular locality. This very idea have revolving around the above said provisions of Bombay Police Act, 1951, makes it obligatory that the whole exercise must be done as expeditiously as possible and within a reasonable time frame."

#. In the case of Yohel @ Rocky Anisan Macwan vs. State of Gujarat, this Court relied upon the decision of Vasantiben M. Randeri (supra) and ultimately came to a conclusion that in the facts of that case, there was delay in passing externment order and that delay was inordinate which snapped live link of the alleged anti-social activities of the petitioner.

#. With the above proposition of law, if in the facts of the present case are considered, it is evident that a show cause notice was issued on 16th March, 1998 and the order came to be passed on 30th July, 1999 i.e. after about one year and three and a half months. It is urged on behalf of the petitioner that the delay for whatever reason is too long and inordinate. On the other hand, an attempt is made to indicate that the delay is the outcome of the conduct of the petitioner himself. Mr. Dave, learned APP gives the following relevant dates.

25.3.98 : Petitioner through his advocate appeared and asked for time. Time granted upto 4th April, 1998.

4.4.98 : Again time was sought by the petitioner and time was granted upto 13th April, 1998.

13.4.98 : Petitioner filed preliminary reply and asked for time for examining the witnesses. Time granted upto 22nd April, 1998.

22.4.98 : Petitioner sought time on the ground of absence of his advocate. Time granted upto 5th May, 1998.

5.5.98 : Petitioner sought time on the ground absence of his advocate. Time granted upto 11.5.98.

11.5.98 : Petitioner did not remain present. An application seeking time given. Time granted upto 8.6.98.

8.6.98 : Petitioner remained present but prayed for time. Time granted upto 16.6.98.

16.6.98 : Petitioner remained present but his advocate was not present. Petitioner sought time on the ground of absence of his advocate. Time granted upto 29.6.98.

29.6.98 : One witness was examined. Adjourned to 16th July, 1998.

16.7.98 : Time sought by the petitioner. Time granted upto 30th July, 1998.

30.7.98 : Petitioner sought time. Time granted upto 14thAugust, 1998.

14.8.98 : Petitioner was present but his advocate was absent. Therefore, time was sought. Time granted upto 27th August, 1999.

27.8.98 : Petitioner did not remain present. The matter was adjourned to 7.9.98.

7.9.98 : Application for time was given. Time granted upto 16.9.98.

16.9.98 : Again the petitioner was absent. His brother was present. Time was sought on the ground of death of his mother. Time

was granted upto 23.9.98.

23.9.98 : Petitioner remained present. He sought time on the ground of after death ceremony. Time was granted upto 6.10.98.

6.10.98 : Petitioner was present and advocate was absent. Time was sought. Time granted upto 14.10.98.

14.10.98 Petitioner and his advocate were absent. Matter was adjourned to 23.12.98.

23.12.98 Notice was issued to the petitioner returnable on 16th January, 1999 which was served on 29th December, 1999.

16.1.1999 Petitioner was absent. Therefore, again second notice was issued on 22nd February, 1999 returnable on 6.3.99.

6.3.99 : Though notice was served, the petitioner did not remain present.

6.4.99 : Notice was issued to the petitioner returnable on 12.4.99 which was served upon him.

12.4.99 : Petitioner was absent. Adjourned to 10.5.99.

5.5.99 : Notice was issued to the petitioner returnable on 10.5.99.

10.5.99 : Notice was served. Petitioner remained present along with advocate and examined four witnesses. Adjourned to 14.5.99.

14.5.99 : Petitioner gave an application for time for submitting his final reply. Time was granted and matter was adjourned to 24th May, 1999.

24.5.99 : Petitioner submitted his final reply and order was passed.

2.7.99 : Asstt. Commissioner of Police, along with material sent the order to Deputy Commissioner of Police, which he received on 3rd July, 1999.

5.7.99 ; Deputy Commissioner of Police issued notice to petitioner to remain present on 10.7.99.

10.7.99 : Petitioner remained present and filed the same reply as filed on 24th May, 1999.

30.7.99 : Order was passed.

#. It is evident from the above dates that the petitioner went on asking for adjournments from time to time right upto 14th October, 1998. Thereafter, several notices were issued to him. The petitioner still remained absent and the authority went on issuing notices. At last, in response to the last notice dated 5th May, 1999, the petitioner appeared on 10th May, 1999 on which date, the witnesses were examined and thereafter the matter seems to have proceeded more or less at a reasonable pace. It is true that the delay is caused because of absence of the petitioner. But there appears to be delay on the part of the authority also. The petitioner did not appear on 14th October, 1998. First action was taken in the form of issuance of notice after two months and 10 days on 23rd December, 1998. The petitioner did not appear on stipulated day on 16th January, 1999 and therefore, second notice was issued again after a lapse of about one month and one week on 22nd February, 1999. Long gap in issuance of both these notices remains unexplained. Apart from this, as has been observed, it was not necessary for the externing authority/inquiring authority to have repeatedly granted opportunities to the petitioner for appearing in the externment proceedings. Once he was given the opportunity, he appeared before the authority, examined one witness and thereafter if he chose to ask for time or to remain absent consistently, the authority was not obliged to go on affording opportunities as that by itself would frustrate the very nature of the power to be exercised in such cases.

#. In the facts of the present case, delay is caused at the hands of the inquiring authority also, (apart from the delay caused by the petitioner) and therefore, the petition deserves to be allowed on the ground of delay, which is almost one year and four months. During this period, there is nothing to indicate any involvement of the petitioner in any nefarious activities. Live link, therefore, can be presumed to have snapped and the petition, therefore, deserves tobe allowed.

##. The petition is allowed. The impugned orders dated 30.7.99 and 6.9.99 are hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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